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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1566

SEMINOLE TRANSPORTATION COMPANY, *Petitioner*,

v.

ARTHUR PERRY, and INDUSTRIAL RELATIONS COMMISSION, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE INDUSTRIAL RELATIONS COMMISSION OF THE STATE OF FLORIDA AND TO THE SUPREME COURT OF THE STATE OF FLORIDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

SEACOAST TRANSPORTATION COMPANY, *Petitioner,*

v.

ANTONIO PEREZ, and INDUSTRIAL RELATIONS COMMISSION, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE INDUSTRIAL RELATIONS COMMISSION OF THE STATE OF FLORIDA AND TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner Seacoast Transportation Company prays that a writ of certiorari issue to review the Order of the Industrial Relations Commission of the State of Florida dated May 6, 1974 and the Order of the Florida Supreme Court denying a Petition for Writ of Certiorari and a Petition for Rehearing of such denial in this case entered March 14, 1975.

OPINIONS BELOW

The first Order of the Judge of Industrial Claims is unreported. It is reprinted in Appendix A, pp. 1a-4a, *infra.* The first Opinion of the Industrial Relations Commission is unreported. It is reprinted in

Appendix B, pp. 5a-8a, *infra*. The first Opinion of the Supreme Court of the State of Florida is reported at 249 So. 2d 21 and is reprinted in Appendix C, pp. 9a-10a, *infra*. The second Order of the Judge of Industrial Claims is unreported. It is reprinted in Appendix D, pp. 11a-16a, *infra*. The second Order of the Industrial Relations Commission is unreported. It is reprinted in Appendix E, pp. 17a-18a, *infra*. The denial of certiorari by the Supreme Court of the State of Florida on the second petition is reported at 308 So. 2d 537 and is reprinted in Appendix F, p. 19a, *infra*.

JURISDICTION

The second Order of the Industrial Relations Commission of the State of Florida was entered on May 6, 1974. The Supreme Court of Florida denied a Petition for Writ of Certiorari to review that Order on January 14, 1975. The Florida Supreme Court denied a timely Petition for Rehearing on March 14, 1975. The Order of the Industrial Relations Commission dated May 6, 1974, was not final until that Petition for Rehearing was denied on March 14, 1975. This Court has jurisdiction under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the proper legal principles were utilized by the Florida Supreme Court and the Industrial Relations Commission of the State of Florida in deciding the issue of whether an employee of a common carrier by Railroad performing duties as a truck driver in the service of a trucking company which is a wholly owned subsidiary of the railroad formed to afford substituted service along parallel routes is covered for accidental injuries on the job by the Florida Workmen's Compensation Statute or instead he must look to the Federal Employer's Liability Act for any recovery for such injuries, because the Federal Em-

ployers' Liability Act is applicable and preempts the field?

STATUTES INVOLVED

Section 440.09, Florida Statutes; Title 45, Section 51, as amended. Section 440.09, Florida Statutes, and Title 45, Section 51 are reprinted in Appendix G hereto, pp. 20a-23a, *infra*.

STATUTES INVOLVED

Section 440.09, Florida Statutes; Title 45, Section 51, as amended. Section 440.09, Florida Statutes, and Title 45, Section 51 are reprinted in Appendix G hereto.

STATEMENT OF THE CASE

A. Factual Background

Seaboard Coastline Railroad Company (Seaboard) is a common carrier by rail operating in Interstate Commerce and is covered by Title 45, United States Code § 51, *et seq.*, for injuries to its employees, who are covered by that title and sections.

Appellant, Seacoast Transportation Company (Seacoast), is a Florida corporation which operates trucks in substituted service for rail transportation parallel to Seaboard's railroad tracks. Further, Seacoast is a wholly-owned subsidiary of Seaboard and performs services solely for Seaboard and its subsidiaries.

This litigation began when the claimant, Antonio Perez, was injured and filed a claim with the Industrial Relations Commission of the Florida Department of Commerce (Commission). Claimant was a truck driver who was employed by Seaboard and who drove a truck of Seacoast and was injured by an accident arising

out of and in the course of his employment as truck driver on October 23, 1968, when his truck ran off the road and he injured his hand.

The Claimant is one of seventy-nine (79) persons who are classified by Seaboard as Seaboard Employees in the Service of Seacoast. These seventy-nine (79) employees are permitted to transfer between Seacoast and other branches of Seaboard. Also, no Social Security is deducted from the pay of these employees or of any other railroad employees, but instead railroad retirement tax is deducted pursuant to the requirements of the Railroad Retirement Act. These seventy-nine (79) employees are required to belong to the railroad union and they are entitled to railroad passes. Finally, their paychecks are drawn by Seaboard, and Seacoast itself does not have a bank account.

Seacoast operates under the Florida Public Utilities Commission Tariff issued to the railroad, Seaboard, and is only authorized under its Certificate of Public Convenience and Necessity July 1, 1968, to run trucks in substituted service parallel to its tracks, but otherwise cannot engage in a trucking business.

By and large, Seacoast used the standard railroad employment forms and claimant's application for employment is on a printed form headed "Seaboard Coast Line Railroad Company, Application for Employment," and on the first line after the printed words Application for Position appears in claimant's handwriting the word "helper" at Seaboard Coast Line. The name Seacoast does not appear anywhere on the Application for Employment.

Also appearing in claimant's personnel file is a Request for Record signed by the claimant addressed to

Atlantic Coast Line Railroad Company on ACL Form 820, a medical form showing employer as Atlantic Coast Line Railroad Company, a report on July 1, 1968 on employee's entering service headed "ACL Railroad Company" and a Notice of Approval of the medical department for employment by Seaboard Coast Line Railroad Company. There is also in the file a physician's certificate headed "Seacoast Transportation Company" and an FHA form 2004G showing that the claimant was employed by Seaboard Coast Line Railroad Company in the service of Seacoast Transportation Company.

B. Proceedings before Remand

Beginning with the original hearing before the Judge of Industrial Claims and on every level thereafter, the Appellant contested the jurisdiction of the Industrial Relations Commission on the basis that the Claimant was not a covered employee under Florida's Workmen's Compensation Act (Act), but instead, would have to proceed under the Federal Employers' Liability Act (F.E.L.A.), as his exclusive remedy.

At the original Workmen's Compensation Hearing, the Judge of Industrial Claims found (1) that the claimant was an employee of Seacoast *or* that he was loaned to Seacoast by Seaboard and as such, he was not a railroad employee within the purview of Title 45, U.S.C. § 51 *et seq;* and (2) that the claimant was, therefore, an employee engaged in covered employment under the Florida Workmen's Compensation Act and not within the exclusion within such Act contained in Florida Statutes § 440.09(2), which section of the Florida Statutes, until October 1, 1974, exempted from the Act "any employee of a common carrier by railroad . . . engaged in . . . interstate . . . commerce."

That section now exempts from the Act, "any employee covered by the Federal Employers' Liability Act." (Appendix G)

Appellant appealed and the Industrial Relations Commission of the State of Florida reversed holding that under the facts as aduced before the Judge of Industrial Claims, the Claimant was, as a matter of law, an employee of Seaboard since Seacoast was not an operating company and as such, was under the Federal Employers' Liability Act and not subject to the jurisdiction of the Commission under the Florida Workmen's Compensation Act.

Upon a Petition for a Writ of Certiorari to the Industrial Relations Commission by the claimant, Antonio Perez, the Supreme Court of Florida, feeling that the findings of fact on the issue of the independent corporate existence of Seacoast were inadequate for review, reversed the Order of the Industrial Relations Commission and remanded the case for further findings of fact, and then for entry of an Order.

C. Proceedings after Remand

On remand, although the appellant, Seacoast, argued that the Judge of the Industrial Claims could make new or additional findings of fact on all issues relating to the jurisdiction of the Industrial Relations Commission, the Judge (a different Judge from the Judge who first considered the jurisdictional issue when Perez filed his claim) felt bound to restrict himself to findings as to the independent corporate existence of Seacoast.

The Judge of Industrial Claims found that Seacoast did have an independent corporate existence, and felt this led to the conclusion that the Florida Workmen's

Compensation Act did apply. On the second appeal to the Industrial Relations Commission by Appellant, the Commission affirmed the findings of the Judge of Industrial Claims as being based on substantial competence evidence. Upon application by Seacoast, the Florida Supreme Court refused to review the decision of the Commission through a writ of certiorari.

REASONS FOR GRANTING THE WRIT

The essential holding of the Florida Supreme Court and the Industrial Relations Commission in this cause is that the Industrial Relations Commission of the State of Florida has jurisdiction over Perez's claim in lieu of jurisdiction under the F.E.L.A. solely because it was found that Seacoast was a separate corporate entity from Seaboard. This standard for determining jurisdiction under the F.E.L.A. is deficient and incorrect because it does not go far enough. This is well illustrated by this Court's opinion in *Kelly* v. *Southern Pacific Company*, 95 S. Ct. 472 (1974). There, Justice Stewart in his Concurring Opinion summed up well the reason for remanding that case:

> "In determining Kelly's status under the FELA the District Judge apparently relied on general agency principles, rather than on the particular principles of master-servant law. This was error, and it is thus proper to remand this case to the District Judge so that he can take a fresh look at the record, in light of the correct legal standard." 95 S. Ct. at p. 480.

The Commission (which includes the Judge of Industrial Claims) and the Florida Supreme Court not only did not consider the principles of master-servant law but also did not rely on general agency principles. They only dealt with the corporate status of Seacoast

and not with its relationship to Seaboard. The opinion of this Court in *Kelly* alone is sufficient support for the proposition that a company can be a corporate entity separate and apart from a railroad and still be an employee of the railroad. Also see *Schroeder* v. *Pennsylvania R. Co.*, 397 F.2d 452 (CA7, 1968).

Because the Commission and the Florida Supreme Court used an incorrect legal standard in determining whether Perez's claim was within the jurisdiction of the Commission or instead fell under the F.E.L.A., they in effect held that both the applicable Florida law and the F.E.L.A. applied to the facts of this case and that the Florida law prevailed over the F.E.L.A. This is contrary to a legion number of cases holding that the F.E.L.A. supersedes state law under these circumstances. Also, by using an erroneous standard, they have deprived the Petitioner of an important federal right—the right to have the claims of persons such as Antonio Perez determined under the appropriate Federal laws, in this case the F.E.L.A.

This Court's decision in *Kelly* v. *Southern Pacific Company, supra,* was a new starting point for ascertaining the proper standard for determining jurisdiction under the F.E.L.A. since the purpose of that decision was to resolve the conflict among the federal circuits. This Court should now resolve the conflict between that decision and the Order of the Industrial Relations Commission and the Order of the Florida Supreme Court sought to be reviewed in this Court, reverse the decision of the Industrial Relations Commission and of the Florida Supreme Court and remand this case as was done in *Pelliccioni* v. *Schuyler Packing Company,* 95 S. Ct. 769 (1975).

For the reasons stated, *supra,* we believe the questions presented by this Petition are substantial and that they are of public importance due to the prevalence among the states of workmen's compensation laws and the frequency with which the issues involved in this Petition arise in the lower courts.

Respectfully Submitted,

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